THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.19389 OF 2005

DATED:12.9.2005

Between:

N. Subhash Jain,

S/o.Nemi Chand Jain,

Door No.4-107, Bazar Street,

Puttur, Chittoor District.

…Petitioner

And

The District Collector, Chittoor and another

…Respondents

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ORDER:

The petitioners' claim to be absolute owners of land admeasuring Acs.5.09 in S.No.193/1 to 193/11 of Nandimangalam Village, Puttur Mandal, Chittoor District. The respondents initiated proceedings under the Land Acquisition Act, 1894 (for short, the Act) to acquire the land in various sub-divisions of S.No.193 of Nandimangalam Village for public purpose, namely provision of house sites for persons belonging to weaker sections of the society. First respondent also dispensed with the enquiry under Section 5A of the Act in view of the urgency. Accordingly, necessary declaration under Section 6(1) of the Act was also published

in newspapers. At this stage, petitioners approached this Court assailing land acquisition proceedings.

Learned counsel for the petitioners, Sri I.Naveen Kumar submits that the impugned notification is illegal for dispensing with enquiry under Section 5A of the Act in a routine manner though there is no urgency. Secondly, he would contend that there is adequate Government land available in the near vicinity and therefore there is no necessity to acquire petitioners' land where petitioners have already constructed a building measuring 20 feet x 40 feet where petitioners want to establish business in the name and style of M/s.Jain Fruit Canning Industries and M/s.Manjula Fruit Canning Industry. Learned counsel for the petitioners also submits that the petitioners have obtained necessary permission for construction of said building in the property as it is well suited for the industry and as it is abutting national highway. According to the learned counsel, if only first respondent has ordered enquiry under Section 5A of the Act, they would have asked for exemption of the land. He placed reliance on **Union of India v. Krishan Lal Arneja**. **Per contra,** learned Assistant Government Pleader for Land Acquisition after getting instructions submits that the revenue officials conducted a detailed survey before identifying the petitioners land for acquisition. He, however, is not able to deny the submission of the petitioners that they have already constructed shed for starting fruit canning industry.

It is no doubt true that the power under Section 17(4) of the Act dispensing with enquiry under Section 5A of the Act has to be exercised for valid reasons. Informal or routine exercise of power dispensing with enquiry under Section 5A of the Act which gives a valuable right to the land owners to raise objections to land acquisition is *per se* improper exercise of jurisdiction. However, when the acquisition is for provision of house sites for weaker sections, there is always a presumption that there is urgency as held by this Court in **Janapareddy Venkateswara Rao v. District Collector, Eluru.** Even if there is urgency for acquiring the private property, as per relevant Board Standing Orders it is always necessary for the authorities to avoid acquiring private land when there is Government land available for reasons which are obvious. As there is serious dispute on this regard and petitioners are also willing to show some of the lands belonging to them, it would be in the interest of justice if first respondent considers the representation of the petitioners in this regard. Liberty is given to petitioners to make a representation within a period of one week from today, which shall be considered by the District Collector as well as the Land Acquisition Officer immediately.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

12.9.2005

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Note:CC by 14.9.2005.

(B.O)

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